IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1117 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JUMA UMAR KUMBHAR

Appearance:

MR KC SHAH APP for appellant.

MR CH VORA for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 30/03/2000

ORAL JUDGEMENT

The State of Gujarat has preferred this acquittal appeal against the impugned judgment and order of acquittal dated 23rd November, 1990, rendered by the learned Chief Judicial Magistrate, Kutch at Bhuj, in Criminal Case No. 1217/86.

It so happened that the complainant Shri Manharlal Chunilal Patel, Food Inspector, Bhuj Nagar Palika, had occasion of taking sample of buffalo milk from the shop of the accused at around 13-30 hours on 28th February, 1986, and upon its analysis by the Public Analyst, it was found to be not conforming to the standards laid down under the Prevention of Food Adulteration Act, 1954 (PFA Act for short). Upon the complaint filed by him and at the conclusion of the trial, the learned Chief Judicial Magistrate rendered acquittal on number of grounds including the ground that the prosecution failed to establish the procedure of stirring of the milk when the sample was taken, and that the complaint was filed after a passage of nearly five months so that the notice as required under section 13 (2) of the PFA Act could be served after a period of 5 1/2 months of the date of taking sample of the milk in question. The learned Chief Judicial Magistrate found that this would obviously result into prejudice to the accused in as much as he could not be said to have an appropriate opportunity of getting another sample examined by the expert in the Central Food Laboratory.

The learned APP has taken me through the evidence including the report of the Public Analyst. Having heard him as well as the learned advocate for the accused, I am of the opinion that upon appreciation of the evidence adduced before the learned Chief Judicial Magistrate, the findings rendered by him can not be faulted in the context of the report of the Public Analyst to the effect that milk fat is according to the standards whereas the milk SNF is less by one percent. This might have occurred on account of the fact that the complainant might not have undergone the procedure of taking sample after properly stirring the milk.

In overall view of the matter, in the context of the facts of the case, this Appeal is not required to be entertained. Same is accordingly dismissed.

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JOSHI